

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 1821 of 2015 (O&M)

DATE OF DECISION : 07.01.2016

M/s Crystal Phosphates Ltd. and another

.... APPELLANTS

Versus

Presiding Officer, Industrial Tribunal, Amritsar and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Rajesh Garg, Senior Advocate, with
Mr. Nitesh Singhi, Advocate,
for the appellants.

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SATISH KUMAR MITTAL, J.

This intra-court appeal under Clause X of the Letters Patent has been filed by the Management against the order dated 14.10.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 21954 of 2015) filed by the appellants challenging the award dated 03.08.2015 (Annexure P-11) rendered by the Labour Court ordering reinstatement of workman Gurjinder Singh (respondent No.2 herein) with 50% back wages, has been dismissed.

Though there is delay of 26 days in filing the appeal and the appellants have filed application (CM No. 3927-LPA of 2015) for condoning the said delay, yet we have heard learned counsel for the appellants on merits and have gone through the award passed by the Labour

Court as well as the impugned order passed by the learned Single Judge.

In the present case, vide appointment letter dated 16.10.2002, the respondent – workman was employed with the appellants as a driver at Amritsar on a monthly salary of ₹ 4,000/-. Vide letter dated 21.09.2007 issued by the Management, services of the respondent – workman were terminated with effect from 31.05.2007, on the ground that he failed to report for duty at the place of his transfer. The respondent – workman questioned the termination of his services by raising an industrial dispute. The Labour Court vide award dated 03.08.2015 decided the reference in his favour while holding the termination of his services as illegal and unlawful; and ordered for his reinstatement with 50% back wages. The Management challenged the aforesaid award by filing CWP No. 21954 of 2015, which has been dismissed by the learned Single Judge vide order dated 14.10.2015.

While dismissing the writ petition and affirming the award of the Labour Court, the learned Single Judge has come to the conclusion that in the facts and circumstances of the case, the Management was not justified to terminate the services of the respondent – workman, that too without holding domestic enquiry. Termination of the services of the respondent – workman has been held to be illegal and an act of unfair labour practice. It has been further held that the oral transfer order asking the respondent – workman to report either at Bathinda or at Ludhiana is a case of his

victimisation, and in view of Entry 7 in the Fifth Schedule to the Industrial Disputes Act, 1947, such an act amounts to unfair labour practice.

Learned counsel for the appellants tried to convince this court that the respondent – workman was transferred in terms of his appointment letter. Therefore, it cannot be said that while transferring him, the Management has adopted an unfair labour practice. However, it has not been disputed that before terminating the services of the respondent – workman on the ground that he failed to report for his duties at the place of his transfer, no domestic enquiry was conducted and straight-way, vide a letter, he was asked to report either at Bathinda or at Ludhiana. Once the respondent – workman took a stand that he was never transferred and was available for duty at Amritsar, it was incumbent upon the Management to conduct a domestic enquiry, which was not conducted. So far as the act of victimisation of the respondent – workman is concerned, the learned Single Judge has observed that the respondent – workman along with his family, consisting of his wife, two children and an aged mother, is living at Amritsar; and a meager amount of ₹ 4,000/- per month is not sufficient for him to maintain his family at Amritsar, while serving at the transferred place.

After hearing learned counsel for the appellants, we are of the opinion that in view of the finding of fact recorded by the Labour Court as well as the learned Single Judge to the effect that before terminating the

services of the respondent – workman, no domestic enquiry was held, and further that it is a case of his victimisation and unfair labour practice, we do not find any ground to interfere with the impugned order passed by the learned Single Judge.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

January 07, 2016
ndj

(HARINDER SINGH SIDHU)
JUDGE